Reasons for Rejecting Writ as to First Question Presented.

The United States Court of Appeals for the Third Circuit in a precisely written opinion held that the United States District Court for New Jersey did not have the "summary jurisdiction" to reduce the payment under the contingent fee agreement entered into between plaintiff and defendant. The Court agreed with the New Jersey law regarding the right of New Jersey Courts to reduce the contingent fees of attorneys admitted to practice before these courts because "attorneys are officers of the respective courts in which they practice". *Lynde* v. *Lynde*, 64 N. J. Eq. 736, 52A 694, 697 (E. & A. 1902); *Hughes* v. *Eisner*, 14 N. J. Super. 58, 81A, 2nd 394, 397 (1951).

The Court held, however, that since plaintiff was not a New Jersey Attorney and did not have the privileges of appearing before the New Jersey Courts or of holding himself out as an officer of those courts, including the United States District Court in New Jersey, there was a lack of summary jurisdiction to review his contractual contingent fee under New Jersey law. This position taken by the Court is supported by an untold legion of New Jersey cases in varying language, some of which are set forth to illustrate the clarity of the New Jersey Rule.

In *Colgan* v. *Jones*, 44 N. J. Eq. 274, 18A 55, 56 (E. & A. 1888) the court held that in view of the control of the courts over their practitioners, and of the peculiar relation of trust, the court will generally supervise the question of compensation. This statement was made by the Court in an action wherein the Court was dealing with a contingent fee payable to a New Jersey Attorney. The following case supports the *Colgan* case. *Kelley* v. *Schwinghammer*, 78 N. J. Eq. 437, 79A 260 (Ch. 1911).

The Appellate Division of the Superior Court of New Jersey stated in *Hughes* v. *Eisner, supra,* 81A 2nd 394, 397, that a Court of Equity . . . "may inquire into the fairness and reasonableness of a contract entered into by attorney and client concerning the compensation of the attorney, and that the Court may if the facts warrant revise or cancel such a contract." . . . "This authority of the Court grows from the confidential relation between the parties and also from the fact that an attorney is a high officer of the Court, entrusted with unique powers and subjected to a peculiar standard of conduct."

In *Mundy et al.* v. *Strong, et al.*, 52 N. J. Eq. 833, 31A 611, 612 (E. & A. 1895) it was succinctly stated that:

> "Attorneys and solicitors are officers of the Court, and there is no doubt of the authority of the Court to proceed summarily against them for their misconduct. But the behavior which will justify the exercise of this summary jurisdiction must be such as is dishonest or oppressive or clearly illegal. If it appears that there exists between a lawyer and his client a fair dispute, which can be decided only on the settlement of a doubtful question of fact or law, the court should leave the parties to their ordinary remedies."

This case further substantiates the point of law decided by the Circuit Court, namely that New Jersey cases hold a court derives its authority to regulate an attorney's conduct and his contingent fees only from the fact that an attorney is a high officer of the Court. Thus, that control would be applicable only to those licensed to practice before the New Jersey Courts since an attorney from another state or country has no standing before nor could he be considered an officer of the New Jersey Courts.

The same line of reasoning would apply to the United States District Court of New Jersey and one cannot be an attorney and officer of this Court unless specifically admitted to practice before it. The fact that this party has been admitted to a District Court for another United States District would not automatically admit him, nor in fact would his mere admission to the New Jersey Courts qualify him to practice before it prior to his being sworn as a member. Thus, the conclusion automatically follows that since plaintiff was not an attorney nor employee of the Court he was not an officer thereof.

In *Theard* v. *United States*, 354 U. S. 278 (1957), this Court held that the United States District Court in Louisiana could not under its rules automatically disbar an attorney merely because the State Courts in Louisiana did so. It stated that the party was entitled to a hearing and his defense could be offered. The reason for this was stated as follows:

> "The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included. The court's control over a lawyer's professional life derives from his relation to the responsibilities of a court . . .".

Thus, it appears that the ruling of the Circuit Court in this case is not only in harmony with the New Jersey Law but in full accord with the findings and law as defined by this Court when it holds that plaintiff as an attorney admitted to practice before the Georgia and Washington, D. C. bars is not *ipso facto* admitted before the United States District Court for New Jersey.

Flowing from this conclusion would be the next, namely, that the New Jersey Court and more particularly the

United States District Court in New Jersey had no more authority over his professional life than they would have over any laymen or party who practiced the other learned professions such as medicine, dentistry or architecture, to mention a few.

This section of the brief could best be concluded by referring to another decision of this learned court, *Ex Parte Bradley*, 74 U. S. 364, 7 Wall. 364 (1868), wherein a Writ of Mandamus issued from this Court to the Supreme Court of the District of Columbia ordering it to restore to its bar a disbarred attorney. The Court in support of its Writ stated that it did not doubt the . . . "power of the court to punish attorneys as officers of the same, for misbehavior in the practice of the profession. This power has been recognized and enforced since the organization of courts and the admission of attorneys to practice therein. If guilty of fraud against their clients, or of stirring up litigation by corrupt devices, or using the forums of law to further the ends of injustice; in fine for the commission of any other act of official or personal dishonesty and oppression, they become subject to the summary jurisdiction of the court." In this particular instance, however, the attorney had committed a contemptuous act before another court in the District of Columbia, the Criminal Court of the District, wherein a judge of the Supreme Court of the District was temporarily sitting as a judge of said Criminal Court, the latter being an entirely independent court. The Supreme Court of the District disbarred him as a punishment for the act committed before its judge temporarily assigned to the Criminal Court.

The case clearly held at page 374:

> "Our conclusion is—First, that the judges of the court below exceeded their authority in punishing the relator for a contempt of that court on account of

contemptuous conduct and language before the Criminal Court of the District." . . . (At p. 372.)

"Another ground relied on in the return for disbarring the relator is that his conduct was not merely a contempt of the authority of the Supreme Court, but was also gross misbehavior in his office as an attorney generally, and that, for this reason also, his offense was cognizable by the court in general term."

The Court denied the justice of the above claim on the grounds that:

". . . It assumes the broad proposition that the attorney may be called upon to answer an offense specified and when the answer comes in, without any further notice or opportunity of defense or explanation, punish him for another and distinct offense."

Finally it is urged that the Circuit Court rightfully followed all of the existing case law in holding that the District Court had no jurisdiction to reduce the contingent fee of plaintiff particularly in view of the fact that no rescission was sought or fraud alleged and that the action in question was brought in law on a written contract. The Court had no right to exercise summary jurisdiction over a contingent fee earned by an attorney not an officer of that particular District Court any more than it could exercise "summary jurisdiction" over a contract between laymen.

Reasons for Rejecting Writ as to Second Question Presented.

The right of any Federal Appellate Court to consider a jurisdictional question even though not considered by the Court below or raised by the parties has been clearly set forth by this court on innumerable occasions.

It would be an impossible task to set forth all these decisions in the space which a brief of this type allows; however, we have chosen several which illustrate this crucial point.

In *Mansfield, C. & L. M. R. Co.* v. *Swan*, 111 U. S. 379, 4 S. Ct. 510 (1884), this Court stated that the question of jurisdiction is primary and fundamental in every case and cannot be waived by the parties or overlooked by the Court. It may be raised at any time, by any party, or even by the court on its own motion.

This principle is further supported in *United States* vs. *Huckabee*, 16 Wall. 414 and *Gates* v. *Osborne*, 9 Wall. 567, this Court holding that in an appellate court in cases where the subordinate court was without jurisdiction of the subject matter, and has improperly given affirmative relief, the judgment or decree in the court below must be reversed even on application of the party bringing the proceeding.

Any further prolongation of this line of cases to support our proposition would be merely cumulative in effect, so as a final citation again we refer to another decision of this Court, *Giles* v. *Teasley*, 193 U. S. 146, 24 S. Ct. 359 wherein the Court holds the following: in every case which comes to the Federal Supreme Court on writ of error or appeal, the question of jurisdiction must first be answered whether propounded by counsel or not.

There is no doubt in our minds that this rule which guides this Court also applies to United States Court of Appeals and was binding upon the Third Circuit when it decided the case now in question.

The first question in our brief was answered in a way which we feel supports the Circuit Court. The District Court had the jurisdictional right to decide the contractual question and give judgment in favor of or against the plaintiff for $13,000.00. It did not, however, have "sum-

mary jurisdiction" over plaintiff Gray since he was not an attorney or officer of the United States District Court for New Jersey, or any New Jersey Courts for that matter.

This point was argued at length previously so we will not again belabor it; however, since the District Court had interpreted the contract and felt that it clearly stated plaintiff was entitled to the $13,000.00, its jurisdiction ended.

Thusly, when it sat the second time as a Court of Equity and attempted to, in its own words, exercise "summary jurisdiction", it was actually sitting with no jurisdiction whatsoever. The Court of Appeals, acting in concert with the ruling law as enunciated by this Court, upheld the finding of the lower court as to the interpretation of the contract and its finding that under its terms plaintiff was entitled to $13,000.00, which the court found sitting as a Court of Law, and held that the court improperly took equitable jurisdiction and in fact had no "summary jurisdiction" over plaintiff Gray.

Reasons for Rejecting Writ as to Third Question Presented.

The District Court in this case listened to all the evidence regarding the circumstances surrounding the execution of the written contract which is the subject of this suit and all parties agreed that Exhibit P-1 (App. Cir. Ct. App. p. 76a) was the contract.

In its opinion filed February 26, 1958 the District Court states:

> "In this case there is no suggestion of mistake, mutual or unilateral, as an inducement to the entry into the agreement. Moreover, neither party sought either reformation or cancellation of the contract. The present action is one at law for breach of an express written contract couched in common English

and without any technical or abstruse verbiage. The written instrument is a memorial of the oral understanding previously reached between the parties. This is obvious from the very first sentence of the instrument" (App. Cir. Ct. App. p. 90a).

The general proposition that the construction and effect of a written instrument is a matter of law to be determined by the court not the trier of facts has been clearly stated in New Jersey. *Whittle* v. *Associated Indemnity Corporation*, 130 N. J. L. 539, E. & A. (1943); *Frisbre Towing Co.* v. *London Guarantee & Accident Co.*, 146A 215, E. & A. (1929).

This Court has agreed with New Jersey for in *Levy* v. *Gadsby*, 7 U. S. 180, 186 (1805), it said, ". . . no principle is more clearly settled, than that the construction of a written evidence (contract) is exclusively with the court."

Another important consideration is clearly set forth by the Circuit Court in its opinion in this case. It quotes this Court in the case of *Good* v. *Martin*, 95 U. S. 90, 95 (1877), wherein it held, "Facts and circumstances attendant at the time the contract was made are competent evidence for the purpose of placing the court in the same situation, and giving the court the same advantages for construing the contract which were possessed by the actors."

Petitioner on pages 12 and 13 of his brief filed with this Court raises several questions that have been previously answered but not specifically referred to and we feel they should be dealt with concisely now.

This suit when filed in the District Court was one based on a written contract and was not in any guise a *quantum meruit* case. Therefore if the contract were such that it should have gone to the jury for interpretation, which of course it clearly was not, the jury would still have had no control over the reasonableness of the fee. They could merely decide if the plaintiff was entitled to $13,000.00 or to nothing.

A paradox is also posed for this court's attention, according to petitioner, namely when a New Jersey attorney sues on a contingency contract the New Jersey Courts may review it, but if a lawyer not admitted to practice before these courts sues, the defendant can not have its reasonableness determined by the New Jersey courts.

We feel this is no paradox and can be easily explained. Any time a client objects to paying the fee of an attorney not admitted to practice before the New Jersey Courts he may appeal for rescission or allege fraud, mistake or misrepresentation and his agreement may be reviewed. He cannot, however, state there is no fraud, misrepresentation or misunderstanding, be content to allow the court to decide the meaning of the agreement and if it is unfavorable, ask the court to exercise a "summary jurisdiction" it has over its own officers and attorneys and request the court to reduce the fee on that basis.

The jurisdiction of the courts over attorneys admitted to practice before them has been established from the inception of courts and there is no change even in these times which necessitates or even allows courts to extend this power of summary jurisdiction. The allowance of this practice would deprive those parties affected of a fair and impartial trial.

Conclusion.

For the foregoing reasons, it is respectfully requested that the petition for a writ of certiorari be denied.

THOMAS P. FORD, JR.,
Attorney for Respondent,
1180 Raymond Boulevard,
Newark, New Jersey.

Dated: August 7, 1959.